

**IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION**

**CIVIL NO. 1:06CV125**

**UNITED STATES OF AMERICA, ex** )  
**rel. James and Jane Lindsey, and** )  
**Jasmine M., by and through her** )  
**guardian ad item,** )

**Plaintiffs,** )

**Vs.** )

**EASTER SEALS UCP NORTH** )  
**CAROLINA, INC.,** )

**Defendant.** )

**ORDER**

**THIS MATTER** is before the Court on the Magistrate Judge's Memorandum and Recommendation, filed October 4, 2007.

Pursuant to 28 U.S.C. § 636(b) and the standing Orders of Designation of this Court, United States Magistrate Judge Dennis L. Howell, was designated to consider pending motions in the captioned civil action and to submit to this Court recommendations for the disposition of these motions.

On October 4, 2007, the Magistrate Judge filed a Memorandum and Recommendation in this case containing proposed findings of fact and conclusions of law in support of a recommendation regarding Defendant's motion to dismiss and Plaintiffs' motion to amend. The parties were advised that any objections to the Magistrate Judge's findings were to be filed in writing within 14 days of service of the Recommendation; the period within which to file objections expired on October 22, 2007. No written objections to the Memorandum and Recommendation have been filed.

After a careful review of the Magistrate Judge's Recommendation, the Court finds that the proposed findings of fact are supported by the record and that the proposed conclusions of law are consistent with current case law. Accordingly, the Court hereby accepts the Magistrate Judge's Recommendation that the motion to dismiss be allowed in part and the motion to amend be allowed.

**IT IS, THEREFORE, ORDERED** that Defendant's motion to dismiss is **ALLOWED IN PART** as to those claims that pertain to clients other than Jasmine M. Such claims are hereby **DISMISSED WITHOUT PREJUDICE**. The remaining portion of Defendant's motion to dismiss is **DENIED WITHOUT PREJUDICE**.

**IT IS FURTHER ORDERED** that Plaintiffs' motion for leave to file a seconded amended complaint is **ALLOWED**, and Plaintiffs are allowed 30 days from entry of this Order in which to file a second amended complaint that complies with Fed. R. Civ. P. 9(b).

Signed: October 24, 2007

A handwritten signature in dark ink, appearing to read 'L. H. Thornburg', is written over a horizontal line.

Lacy H. Thornburg  
United States District Judge

